



American Homeowners  
Grassroots Alliance

*Defending the Interests of 75 Million U.S. Homeowners*

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February 12, 2008

Chairman Kevin Martin  
Commissioner Michael Copps  
Commissioner Deborah Taylor Tate  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Commissioner Jonathan Adelstein  
Commissioner Robert McDowell

Re: WC Docket No. 07-52

Dear Mr. Chairman and Commissioners:

The American Homeowners Grassroots Alliance (AHGA) is the homeowner's consumer advocacy organization supporting federal, state, and local policies that benefit homeowners and encourage homeownership. Telecommunications policy has become increasingly important to our members. Today more than 80% of home buyers search on the Internet for homes for sale. Homeowners use personal computers and the Internet to pay mortgages and other bills, buy products and services, plan vacations and business trips, telecommute, and/or facilitate home-based businesses. Their children use the Internet for school work and research. For these reasons, homeowners have a large stake in the outcomes of telecom policy.

AHGA supports the Commission's August 5, 2005 policy statement outlining the rights of consumers, "subject to reasonable network management." Our view is that to date those rights have been respected by network providers and that the two most critical Internet network policy challenges lie outside the scope of network operators' management policies.

The fourth principle of the FCC's 2005 policy statement states that consumers are entitled to "competition among...content providers." Unfortunately, in the case of buying and selling homes over the Internet, consumers have no such choice for all practical purposes. The National Association of Realtors is currently in litigation with the Department of Justice over its policies regarding the dissemination of information regarding homes for sale on the Internet. The Federal Trade Commission is also suing a regional Multiple Listing Service over its failure to disseminate homeowners' listings over public websites. Both the DoJ and the FTC have been involved in lawsuits or threats of lawsuits against other real estate sector industry groups over anticompetitive practices relating to Internet dissemination of real estate listings. Currently the real estate industry writes the rules of which listings of homes for sale are displayed on public real estate websites, and network operators have neither the oversight responsibility nor ability to address this serious problem.

According to Robert E. Litan, former Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, “if Congress wants a more competitive real estate market, it should start by rectifying the industry’s fundamental problem: brokers themselves set the market’s rules, with no effective oversight to protect home buyers and sellers. The Securities and Exchange Commission, state regulators and an independent industry body (the National Association of Securities Dealers) oversee the securities markets. But there is no state or federal oversight of the listing services — the industry association runs the show. Congress should fix this clear structural conflict of interest by empowering the Federal Trade Commission, with its statutory mandate to protect consumers, to oversee the National Association of Realtors. The enabling legislation also should instruct the commission to ensure that real estate markets are competitive.”

AHGA agrees with Mr. Litan’s views. Both the FTC and the DoJ have done an outstanding job of addressing the problems caused by the real estate service sector’s stranglehold over the rules of Internet content providers in that area, and the lack of competition between real estate content providers. Until oversight responsibility of the real estate services sector is expanded and assigned to the FTC (or DoJ, or FCC), homeowners will not receive fair treatment from the dominant real estate network content providers.

The second major area of Internet network policy challenge is unrelated to network management. It is the lack of broadband access in underserved areas, particularly rural areas. As the Department of Justice observed, in response to the FCC’s request for its comments on network regulation/neutrality, “Internet usage is soaring. Consumers are reaping substantial benefits from new services and technologies.” Despite the tremendous investment made to date and the growing usage and benefits of broadband access, the substantial economic challenges of providing universal broadband access are huge. This issue is far more important than hypothetical challenges regarding network management practices. This is an area where the FCC, in conjunction with Congress, consumer groups and businesses in the broadband sector, should devote a substantial amount of their resources in working together in collaborative fashion to find ways to achieve universal broadband availability.

As broadband use and applications continue to grow exponentially, there will also continue to be growing challenges related to network management. The Department of Justice noted that there has been scant evidence of consumer harm to date, and has recommended the following approach to the FCC: “As a general matter, market forces, rather than regulatory restraints on competition, are better at fostering innovation and investment, stimulating new products and services, reducing costs, and expanding choice. Accordingly, regulation should be avoided except in those rare instances of market failure (e.g., where competition cannot work because of a “natural monopoly”) or where regulation is necessary to protect a clearly defined and compelling public policy goal that cannot be achieved through competition.”

AHGA agrees with this approach. In light of the substantial and growing consumer benefits from broadband and the lack of consumer injury to date, there is no reason to impose pre-emptive regulations that could easily turn out to be counterproductive. Instead the FCC should be guided by its 2005 policy principles and the recognition that in the dynamic broadband marketplace the market itself is more likely than regulations to efficiently and quickly self-correct any problems that emerge. In 1964, Justice Potter Stewart tried to explain "hard-core" pornography, or what is obscene, by saying, "I shall not today attempt further to define the kinds of material I understand to be embraced . . . [b]ut I know it when I see it . . ." The FCC should approach the regulation of network management with the same philosophy. The need for market guidance should be determined on a case-by-case basis, only in cases where it becomes clear that the marketplace will not be able to correct on its own.

Homeowners and other consumers need reliable networks. Whether it is to conduct an online medical visit with their doctor, telecommute, or run a home-based business, they need a network management process that ensures that data is moving seamlessly and in the most efficient manner across the network. One current challenge is the impact of the growing demand on the Internet backbone. Heavy applications are consuming more and more of Internet capacity every day. Last year, there were over 100 million daily viewers for online video. Spam is becoming ever more sophisticated and harmful as possible, with "image spamming" gobbling up ten times more space than text spamming. Finally, sites such as YouTube have revolutionized the Internet by generating more than 65,000 video uploads a day.

To help homeowners and other consumers, network operators must be able to combat spam and protect Internet users from virus attacks or invasions of privacy. The surge in network traffic is straining the capacity of current networks, and network operators must be empowered to deal with that challenge with appropriate short and long term solutions, which may include pricing models that encourage prudent network use practices by homeowners and other consumers, much in the same manner as we select cell phone packages based on anticipated hours of use. Future advances in technology and equipment and increased investment by network providers may well solve the current capacity challenge, but in the interim either such pricing models or packet prioritization models may be necessary to address network capacity challenges.

Because different network providers will use different tools to assure the efficiency of their networks, it is essential that consumers understand the practical impact of network management practices on their uses of the network. AHGA believes that a failure to disclose the service effects of network management that has a material effect on the consumer's service would conflict with the fourth principle of the Commission's August 5, 2005 policy statement. Disclosure of such service effects of network management relevant to the consumer's use of the network will benefit network operators as well, because they will be able to more efficiently and quickly gauge what types of network management practices are most preferred by consumers.

The FCC has a critical responsibility in oversight of broadband and limited resources for that purpose. A more free market approach towards network management regulation is both appropriate and will allow the Commission staff more time to focus more of its resources on some of the larger challenges we have identified. We thank you for this opportunity to share our views on this matter, and we look forward to continuing to share our views on behalf of homeowners as the broadband marketplace continues to evolve.

Sincerely,

A handwritten signature in cursive script that reads "Bruce N. Hahn".

Bruce Hahn  
President